Filed 4/2/10 Bailey v. Duval CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RHODA KATHLEEN NORRIS BAILEY,

Plaintiff, Cross-defendant and Respondent,

v.

RHONDA DUVAL,

Defendant, Cross-complainant and Appellant.

E046098

(Super.Ct.No. MCV07248)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Bert L. Swift, Judge. Affirmed.

Bryant & Bryant and Kenneth A. Bryant for Defendant, Cross-complainant and Appellant.

Slovak Baron & Empey and Peter M. Bochnewich for Plaintiff, Cross-defendant and Respondent.

Rhoda Carlton was the sole owner of certain real property in Twentynine Palms (the Property). In September 1995, she deeded the Property to herself and her daughter, plaintiff Rhoda Kathleen Norris Bailey, as joint tenants. Defendant, Rhonda Duval, is Bailey's daughter and Carlton's granddaughter. In September 2005, when Carlton was terminally ill and under the care of hospice nurses, Duval presented a quitclaim deed to Carlton that purported to deed the Property to Duval. Carlton signed the quitclaim deed. She died the following month.

Bailey sued Duval to cancel the quitclaim deed and quiet title to the property in her name. The suit was based on allegations that Duval obtained the quitclaim deed by the exercise of undue influence over Carlton. Following a bench trial, the court found that Bailey had presented sufficient evidence to shift the burden of proof to Duval to establish that the quitclaim transaction was fair and free from undue influence, and that Duval failed to meet that burden. The court entered judgment cancelling the quitclaim deed and quieting title to the property in Bailey's favor. Duval appealed.

Duval contends: (1) she was denied due process when the court ruled on Bailey's objections to a proposed statement of decision without a hearing; (2) the court failed to apply the presumption of title set forth in Evidence Code section 662[1] and improperly shifted the burden of proof to her; and (3) there is insufficient evidence to support the judgment. We reject these contentions and affirm the judgment.

---

[1] All further statutory references are to the Evidence Code unless otherwise indicated.

I. SUMMARY OF FACTS AND PROCEDURAL HISTORY

In 1995, Carlton executed a grant deed transferring title to the Property to herself and to Bailey as joint tenants. This was done so that title to the property would pass after Carlton's death to Bailey without the need for probate proceedings.

In 2000, Carlton was 90 years old. When her health began to decline around that time, Bailey visited Carlton more often and arranged for a full time, daily caregiver.

The parties presented conflicting evidence as to Carlton's mental capacity between 2000 and her death in October 2005. Bailey's witnesses presented evidence that Carlton was unable to care for herself, was increasingly confused and forgetful, frequently could not recognize close relatives, and was unable to carry on conversations with others. According to an expert witness for Bailey, Carlton suffered from progressive dementia since 2002 and "did not possess the mental capacities and judgment to enter into any business transactions" on the date she signed the quitclaim deed to Duval. According to Duval and other defense witnesses, Carlton showed no signs of mental deficiencies.

In 2004, Duval took Carlton to a bank where Carlton wrote out a handwritten document stating: "Being of sound mind and body, I Rhoda E. Carlton do wish to deed my home and properties to my granddaughter Rhonda Duval . . . ." Carlton gave this document to Duval. In early 2005, Duval learned that Bailey held a joint tenancy interest in the Property. Duval spoke with her uncle, Charles Adams, an attorney, who told her

that the document Carlton wrote in 2004 would be ineffective to transfer the Property to her.[2]

In June or July 2005, Duval and Adams talked about how to get title to the Property to Duval, including the use of a quitclaim deed. Duval and Adams enlisted the aid of a real estate agent and California legal counsel. Duval told the agent she did not believe that Carlton could sign her name on a deed and would have to use an "X" mark in place of her signature. The local counsel advised Duval and Adams that the "X" mark would be sufficient and prepared and sent to Duval a quitclaim deed and other documents for the transaction. Duval did not discuss the quitclaim deed with Bailey or Carlton's relatives (other than Adams). Duval and Adams were aware that the quitclaim deed would trigger a provision in a mortgage on the Property that could result in the forced sale of the Property. Duval did not take Carlton to meet with an attorney regarding the matter, and there is no evidence that Carlton ever spoke with independent counsel about the transaction.[3]

---

[2] There was evidence that as of 2005, Carlton had not heard from Adams for 30 years. Apparently, a rift between them developed after a real estate transaction turned out poorly.

[3] Duval argues that Adams acted as Carlton's independent counsel. This is based upon two items of evidence. The first is a note from Adams to "Jeannine," dated May 5, 2005, which states: "For over 10 years I paid [Carlton] $500 a month. Then I learned [Bailey] had [Carlton] signed [*sic*] a deed giving her the entire property at [Carlton's] death without telling me about it. So, I stopped payments, the accepted rule is that if a parents [*sic*] turn their property over to one of their children, that child has a duty to take care of them. In other words when [Bailey] got [Carlton's] property, she had a duty to take care of her, and relieved me of the responsibility. If I can break this transfer to [Bailey] with a quit claim, then I will resume taking care of her." This note cannot

[footnote continued on next page]

In August 2005, Carlton was certified terminally ill and hospice care was arranged for her. In September 2005, there were as many as eight people involved in Carlton's care.

On September 1, 2005, Bailey suffered a severe stroke and was hospitalized until September 21, 2005. Duval assumed the care and control of Carlton, and made decisions about which medications Carlton should take.

On September 19, 2005, Duval presented the quitclaim deed to the Property to Carlton. In the presence of the real estate agent and with Adams present by telephone, Carlton signed it. The deed reserved to Carlton a life estate in the Property. It was recorded on October 26, 2005. Three days later, Carlton died.

In November 2005, a meeting was held among several family members, including Duval, to discuss the Property. By that time, David Johnson, Bailey's son, had learned of the quitclaim deed and asked Duval about it. Duval initially "denied it." Johnson then confronted Duval with a copy of the deed. According to Johnson, Duval subsequently said that Adams forced her to do it and that she could not "do this anymore" and would "give up." At trial, Duval denied saying that she would give the Property back.

[footnote continued from previous page]
reasonably be read as suggesting that Adams ever acted as Carlton's independent counsel. Indeed, it indicates that Adams was upset by the deed to Bailey and had personal motivations for "break[ing]" the transfer. The second is testimony that Adams was on the telephone when Carlton signed the quitclaim deed in Duval's presence. There is no evidence, however, of what, if anything, Adams said to Carlton. It is not evidence that he acted as independent counsel to her.

In March 2006, Bailey filed a verified complaint against Duval for: (1) quiet title to the Property; (2) cancellation or reformation of the quitclaim deed; (3) conversion of the Property; (4) imposition of a constructive trust; (5) declaratory relief; and (6) financial elder abuse. Duval cross-complained against Bailey to partition the property.

The matter was tried to the court in June and August 2007. In October 2007, the court issued a "NOTICE OF INTENDED DECISION," in which the court stated that judgment was for Duval. The court directed Duval to prepare and serve a proposed statement of decision and judgment. Duval did so.

In November 2007, Bailey filed written objections to the proposed statement of decision. In December 2007, the court issued a written ruling on Bailey's objections. The court stated that Bailey had "presented sufficient evidence (slight) from which coercion can be inferred. Thus, the burden of evidence shifted to [Duval] requiring her to show affirmatively that the transaction was fair and free from influence. [¶] [Duval] has not met that burden and as a result Evidence [C]ode [s]ection 662 does not come in to play. [¶] Judgment is in favor of [Bailey] on all causes of action excepting 'Elder Abuse.'" Bailey then prepared, served, and filed a proposed amended statement of decision.

Duval filed a "Motion for Relief" from the court's ruling on Bailey's objections to Duval's statement of decision and sought a hearing on the objections. Duval asserted that the ruling was contrary to law and should not have been issued without a hearing.

Following a hearing, the court denied the motion. The court then adopted Bailey's proposed amended statement of decision as its own.

In April 2008, the court entered a judgment stating, in part, that Bailey "is adjudged the sole owner of the [Property]" and declaring that the quitclaim deed is "completely canceled." The court also entered a judgment dismissing Duval's cross-complaint to partition the Property as moot. Duval appealed.

Additional facts will be discussed below where pertinent to the issues raised in this appeal.

II. ANALYSIS

A. *Failure to Hold a Hearing on Bailey's Objections to the Proposed Statement of Decision*

Duval argues he was deprived of due process when the court ruled on Bailey's objections to her proposed statement of decision without a hearing. We disagree.

Initially, we note that the failure to hold a hearing on the objections is not inconsistent with the procedure set forth in rule 3.1590 of the California Rules of Court. Subdivision (f) of that rule allows a party to serve and file objections to a proposed statement of decision. Subdivision (i) provides: "The court *may* order a hearing on proposals or objections to a proposed statement of decision . . . ." (Italics added.) The use of the word "may," instead of the mandatory "shall," indicates a permissive standard that vests the court with discretion to hold a hearing. (Cf. *In re Richard E.* (1978) 21 Cal.3d 349, 354; *People v. Failla* (2006) 140 Cal.App.4th 1514, 1521 [Fourth Dist., Div.

Two].) The court was thus not required under the applicable rule to hold a hearing on Bailey's objections.

Nor does the failure to hold a hearing on the objections violate due process. Due process requires reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) Here, the court's ruling on Bailey's objections effectively reversed the court's prior conclusion indicated in its notice of intended decision. That intended decision, however, was merely a tentative decision that gave Duval no right, entitlement, or property interest. Indeed, even if the notice of intended decision constituted a court order, the court had the inherent power to change its decision any time prior to the entry of judgment. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107; *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156-1157.) The court's reversal of its prior tentative ruling did not implicate Duval's right to due process.

B. *The Presumption of Undue Influence and Section 662*

Duval contends the court erred in shifting the burden of proof to her and by failing to apply the statutory presumption set forth in section 662. We reject the contention.

Bailey's claims are based, in essence, upon the assertion that Duval obtained the quitclaim deed from Carlton through undue influence. A deed given as a result of undue influence upon the grantor is subject to rescission or cancellation. (*Stenger v. Anderson* (1967) 66 Cal.2d 970, 980; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 317, p. 344.) Undue influence is statutorily defined as consisting of: (1) "the use, by

one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him"; (2) "taking an unfair advantage of another's weakness of mind"; or (3) "taking a grossly oppressive and unfair advantage of another's necessities or distress." (Civ. Code, § 1575.) However, it has been said that "the courts will not undertake to define [undue influence] by any fixed principles, lest the very definition itself furnish a fingerboard pointing out the path by which it may be evaded; that where a grantor has trust and confidence in the integrity and fidelity of the grantee and the latter takes advantage of the grantor relief will be afforded." (*Stewart v. Marvin* (1956) 139 Cal.App.2d 769, 775.) Here, Bailey alleged facts that would support conclusions of undue influence on the alternative grounds that Duval took unfair advantage of Carlton by virtue of her confidential relationship with Carlton, as well as because of Carlton's weakness of mind.

When property is transferred without consideration by a grantor who is in a confidential relationship with the grantee, a rebuttable presumption arises that the property was obtained by undue influence. (*Solon v. Lichtenstein* (1952) 39 Cal.2d 75, 82; *Barney v. Fye* (1957) 156 Cal.App.2d 103, 107.) A confidential relationship exists whenever trust and confidence is reposed by one person in the integrity and fidelity of another. (*Faulkner v. Beatty* (1958) 161 Cal.App.2d 547, 550.) Such a confidential relationship may exist between an elderly parent and a family member upon whom the parent depends. (*Longmire v. Kruger* (1926) 80 Cal.App. 230, 237; *Azevedo v. Leavitt*

(1946) 76 Cal.App.2d 321, 324.) As stated in *Campbell v. Genshlea* (1919) 180 Cal. 213: "It is to be remembered that in a case involving a purported gift *inter vivos*, based upon an alleged consideration of love and affection, where the donee is a daughter having the control and direction of the aged donor, a strong presumption of confidential relation arises which would place upon the beneficiary in the transaction the burden of showing fairness in dealing and full understanding on the part of the person parting with the property. [Citation.] In the absence of such showing, the conveyance is presumed to have been obtained by undue influence and to be void. [Citations.]" (*Id.* at p. 224.) The use of this burden-shifting presumption in cases involving gifts by elderly, dependent grantors to family members or friends is now well established and settled. (See, e.g., *O'Neil v. Spillane* (1975) 45 Cal.App.3d 147, 155; *Stewart v. Marvin*, *supra*, 139 Cal.App.2d at p. 775; *Estate of Stephens* (2002) 28 Cal.4th 665, 677; see generally, 1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 320, p. 347 [collecting cases].)

The trial court relied on this presumption in this case and ruled that the burden of proof shifted to Duval to prove the absence of undue influence. Specifically, the court stated: "[Carlton] was undeniably very old and had infirmities attendant with age. Thus, where sufficient evidence exists to show, as here, that the quitclaim deed was the product of some coercion, the burden shifts to [Duval], and requires her to show affirmatively that the transaction was fair and free from influence." (Bolding omitted.) Whether the evidence was sufficient to support this finding and to shift the burden of proof to Duval will be addressed in the next section. In this section we are concerned with Duval's legal

arguments that the court should not have applied the undue influence presumption at all and should have applied the presumption of title set forth in section 662.

Section 662 provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." This presumption does not apply in this case for two reasons. First, the section 662 presumption "applies when valid legal title is undisputed and the controversy involves only beneficial title." (*Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1068.) In *Tannehill v. Finch* (1986) 188 Cal.App.3d 224 (*Tannehill*), for example, the plaintiff and the defendant lived together for many years during which the defendant took title to certain property solely in his name. (*Id.* at p. 226.) The plaintiff alleged that she and the defendant had an implied "*Marvin*"[4] agreement to share such property equally and brought an action to establish a one-half interest in such property. (*Tannehill, supra,* at pp. 225-226.) Thus, legal title was undisputedly held by the defendant and the plaintiff's claim was based upon an alleged beneficial interest in the property arising from the implied agreement. The *Tannehill* court held that section 662 applied in that case and the plaintiff was therefore required to prove her claim by clear and convincing evidence. (*Tannehill, supra,* at p. 228; see also *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 486-487.)

In contrast to the plaintiff's claims in *Tannehill*, Bailey's claims were not based upon any alleged beneficial interest in the Property; rather, she disputed and challenged

---

[4] *Marvin v. Marvin* (1976) 18 Cal.3d 660.

the validity of Duval's purported legal title to the property. The issue in this case was not whether the holder of a beneficial interest could defeat the claim of a legal title holder, but whether Duval held a valid legal title in the first place. Section 662 has no application to this issue.

Duval relies primarily upon *Toney v. Nolder* (1985) 173 Cal.App.3d 791 (*Toney*). In that case, the plaintiff separated from his wife and moved in with his girlfriend, the defendant. The plaintiff used his money to purchase a residence for him and the defendant. (*Id.* at p. 793.) In order to prevent the plaintiff's wife from executing on the property to pay for child support, title to the property was taken in the defendant's name only. (*Ibid.*) The plaintiff and the defendant subsequently terminated their relationship and the plaintiff sued the defendant, claiming that he and the defendant had an oral agreement to purchase the property as equal partners. (*Ibid.*) The defendant argued that section 662 required the plaintiff to prove his claim by clear and convincing evidence. The trial court disagreed and found in favor of the plaintiff based upon a preponderance of the evidence. (*Toney, supra,* at p. 794.) The Court of Appeal reversed. The court rejected the plaintiff's argument that section 662 does not apply when the two parties shared a confidential relationship, and held that there is no confidential relationship "exception under the unambiguous language of . . . section 662 that the 'presumption [of title] may be rebutted only by clear and convincing proof.'" (*Toney, supra*, at p. 796.)

Toney, like *Tannehill*, involved a dispute by one party claiming to hold a beneficial interest in property who is seeking to enforce that interest against the

undisputed legal title holder. Section 662 clearly applies to such a dispute according to its terms. *Toney* simply holds that the section 662 presumption applies even when the disputing parties were once involved in a confidential relationship. *Toney*'s holding that there is no "confidential relationship exception" to the section 662 presumption has no relevance in cases, such as the present case, when that presumption does not arise at all. We thus reject Duval's reliance on *Toney*.

The second reason for rejecting Duval's argument that section 662 required Bailey to prove her claims by clear and convincing evidence is that the section 662 presumption does not apply when it conflicts with the presumption that legal title was obtained by undue influence. (Cf. *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 302; *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176, 190, fn. 8 [Fourth Dist., Div. Two].) If the rule were otherwise, someone could take advantage of a confidential relationship to acquire title to property from an elderly, dependent parent, then put the parent to the burden of proving undue influence by clear and convincing evidence by virtue of the very title that was obtained by such undue influence. This would effectively negate the well-established presumption of undue influence and is without precedent or sound policy to support it.

For the foregoing reasons, we reject Duval's arguments that the court erred by rejecting the application of the section 662 presumption of title.

Duval also relies upon Probate Code section 810. This statute provides: "(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of

proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions. [¶] (b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions. [¶] (c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder."

Initially, we note that the presumption in Probate Code section 810 applies by its express terms to "this part"—i.e., to part 17 of division 2 of the Probate Code—which concerns judicial determinations that one is of unsound mind or lacks the capacity to perform specified acts. (Prob. Code, §§ 810-813.) Bailey's action to cancel the quitclaim deed based upon undue influence is based upon section 1575 of the Civil Code and the case law concerning undue influence claims. A claim of undue influence based upon the taking of an unfair advantage of a person in a confidential relationship does not require proof of unsound mind or mental incapacity; indeed, the lesser "weakness of mind" standard is not a necessary element to proving undue influence in a confidential relationship context. (Civ. Code, § 1575, cl. 1.; *Buchmayer v. Buchmayer* (1945) 68 Cal.App.2d 462, 467.) Even claims of undue influence based upon allegations that one took advantage of a "weakness of mind" do not require a judicial determination that the

grantor was of *unsound* mind or lacked the capacity to make the challenged transaction. (See, e.g., *Smalley v. Baker* (1968) 262 Cal.App.2d 824, 834-835, disapproved on another point in *Weiner v. Fleishman* (1991) 54 Cal.3d 476, 485-486; *Odorizzi v. Bloomfield School Dist.* (1966) 246 Cal.App.2d 123, 131; *Stewart v. Marvin*, *supra,* 139 Cal.App.2d at p. 775.) Although published decisions involving allegations of undue influence are numerous, Duval has not referred us to any decision that has required a party claiming undue influence to overcome the Probate Code section 810 presumption of legal capacity in order to establish the claim.

Nevertheless, the trial court in this case, according to its statement of decision, "greatly considered the provisions of Probate Code [s]ection 810 and appreciate[d] its importance." It addressed Duval's contention that Bailey could not overcome this presumption and expressly rejected the argument. Thus, even if the presumption of legal capacity applied to this case, the court expressly considered the presumption and found that Bailey had overcome it.

C. *Sufficiency of the Evidence*

In reviewing a determination of undue influence based upon a confidential relationship, the question of whether a confidential relationship existed is a question of fact. (*Faulkner v. Beatty, supra,* 161 Cal.App.2d at p. 550.) The issue of whether undue influence has been exerted is also a question of fact. (*In re Marriage of Dawley* (1976) 17 Cal.3d 342, 354; *Estate of Larendon* (1963) 216 Cal.App.2d 14, 19.) Finally, when the presumption of undue influence arises, the question of whether the presumption has

been rebutted is a question for the trial court. (*Church of Merciful Saviour v. Volunteers of America* (1960) 184 Cal.App.2d 851, 861; *Camperi v. Chiechi* (1955) 134 Cal.App.2d 485, 504.) We review such factual findings for substantial evidence. (*Estate of Gelonese* (1974) 36 Cal.App.3d 854, 863; *Estate of Sarabia* (1990) 221 Cal.App.3d 599, 605; *David v. Hermann* (2005) 129 Cal.App.4th 672, 684-685.) Under this standard, we "view factual matters most favorably to the prevailing party and in support of the judgment. We defer issues of credibility to the trier of fact. Additionally, we resolve all conflicts in the evidence in favor of the respondents. [Citation.] Our power 'begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion' reached by the trier of fact. [Citation.]" (*Estate of Auen* (1994) 30 Cal.App.4th 300, 311; see also *Azevedo v. Leavitt, supra,* 76 Cal.App.2d at p. 324.)

There is ample evidence in the record to support the presumption of undue influence by Duval against Carlton. Duval was Carlton's granddaughter and, by September 2005, had assumed primary care and control over her. There was ample evidence from relatives and Carlton's hired caregiver that since 2000 Carlton became increasingly forgetful and unable to function in a normal manner as to "day-to-day things"; she had difficulty remembering people and recognizing her relatives; and by August 2005 was speaking incomprehensibly and unable to carry a conversation. She was certified terminally ill on August 18, 2005. On September 30, 2005, Carlton's treating physician certified that she was not "able to understand and act on the ordinary

affairs of life" and not able "to manage funds or direct others how to manage them." According to one expert, Carlton had been suffering from progressive dementia since 2002 and, as of the date Duval presented the quitclaim deed to her, Carlton "did not possess the mental capacities and judgment to enter into any business transactions." Another expert opined that Carlton was "probably grossly impaired" at the time she signed the quitclaim deed and it was "highly probable" that she did not know what she was doing. This expert further opined that a person in Carlton's condition, who is "at the final weeks of her life, is bedridden, dependent on others, confused, unable to think logically, would do most anything . . . for someone they cared about to make them happy." There was thus substantial evidence that Duval had a confidential relationship with Carlton at the time she presented her with the quitclaim deed and that Carlton had a "weakness of mind" within the meaning of Civil Code section 1575.

The circumstances surrounding the presentation of the quitclaim deed support an inference that Duval had taken unfair advantage of her relationship and Carlton's weakness of mind. The deed was obtained from Carlton without consideration from Duval. Although Duval had the benefit of both Adams's counsel and the aid of a local law firm in drafting the quitclaim deed, there was no attempt to provide Carlton with any independent legal advice. (See *Estate of Stephens, supra,* 28 Cal.4th at p. 677, fn. 5 [lack of independent legal advice is a fact to be considered in determining whether grantor acted voluntarily].) The plan to use a quitclaim deed to get title to the Property was devised without any disclosure to or discussion among Carlton's relatives, other than

Adams. Indeed, Duval initially denied the transaction when confronted by relatives after Carlton's death. Finally, Duval obtained the quitclaim deed even though she and Adams were aware that the transaction would trigger a mortgage provision that could result in the forced sale of the Property.

Such evidence easily supports the inference that Duval took unfair advantage of Carlton due to both her confidential relationship with Carlton and Carlton's weakness of mind at the time. Therefore, the court could conclude that the presumption of undue influence was in place and that Duval had the burden of showing that the transaction was fair and free from influence. (See, e.g., *Stewart v. Marvin, supra,* 139 Cal.App.2d at pp. 775-776; *Azevedo v. Leavitt, supra,* 76 Cal.App.2d at pp. 324-329; *Longmire v. Kruger, supra,* 80 Cal.App.at pp. 237-238.) Although Duval presented evidence of Carlton's mental competence at or near the time of the quitclaim transaction and evidence of Carlton's desire to give her Property to Carlton, the same evidence that supports the presumption of undue influence adequately supports the trial court's finding that Duval had failed to rebut the presumption. We therefore reject Duval's contention that the judgment is not supported by substantial evidence.

III. DISPOSITION

The judgment is affirmed. Bailey shall recover her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Miller
J.